

107TH CONGRESS
1ST SESSION

H. R. 2768

To amend title XVIII of the Social Security Act to provide regulatory relief
and contracting flexibility under the Medicare Program.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

Mrs. JOHNSON of Connecticut (for herself, Mr. STARK, Mr. CAMP, Mr. CARDIN, Mr. CRANE, Ms. DUNN of Washington, Mr. ENGLISH, Mr. FOLEY, Mr. HAYWORTH, Mr. SAM JOHNSON of Texas, Mr. KLECZKA, Mr. LEWIS of Georgia, Mr. LEWIS of Kentucky, Mr. McCRERY, Mr. McDERMOTT, Mr. McNULTY, Mr. RAMSTAD, Mr. SHAW, Mrs. THURMAN, and Mr. WELLER) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to provide
regulatory relief and contracting flexibility under the
Medicare Program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECUR-**
 2 **RITY ACT; TABLE OF CONTENTS.**

3 (a) SHORT TITLE.—This Act may be cited as the
 4 “Medicare Regulatory and Contracting Reform Act of
 5 2001”.

6 (b) AMENDMENTS TO SOCIAL SECURITY ACT.—Ex-
 7 cept as otherwise specifically provided, whenever in this
 8 Act an amendment is expressed in terms of an amendment
 9 to or repeal of a section or other provision, the reference
 10 shall be considered to be made to that section or other
 11 provision of the Social Security Act.

12 (c) TABLE OF CONTENTS.—The table of contents of
 13 this Act is as follows:

- Sec. 1. Short title; amendments to Social Security Act; table of contents.
- Sec. 2. Issuance of regulations.
- Sec. 3. Compliance with changes in regulations and policies.
- Sec. 4. Increased flexibility in medicare administration.
- Sec. 5. Provider education and technical assistance.
- Sec. 6. Small provider technical assistance demonstration program.
- Sec. 7. Medicare Provider Ombudsman.
- Sec. 8. Provider appeals.
- Sec. 9. Recovery of overpayments and prepayment review; enrollment of providers.
- Sec. 10. Beneficiary outreach demonstration program.
- Sec. 11. Policy development regarding evaluation and management (E & M) documentation guidelines.

14 (d) CONSTRUCTION.—Nothing in this Act shall be
 15 construed—

16 (1) to compromise or affect existing legal au-
 17 thority for addressing fraud or abuse, whether it be
 18 criminal prosecution, civil enforcement, or adminis-
 19 trative remedies, including under sections 3729

1 through 3733 of title 31, United States Code
2 (known as the False Claims Act); or

3 (2) to prevent or impede the Department of
4 Health and Human Services in any way from its on-
5 going efforts to eliminate waste, fraud, and abuse in
6 the medicare program.

7 Furthermore, the consolidation of medicare administrative
8 contracting set forth in this Act does not constitute con-
9 solidation of the Federal Hospital Insurance Trust Fund
10 and the Federal Supplementary Medical Insurance Trust
11 Fund or reflect any position on that issue.

12 **SEC. 2. ISSUANCE OF REGULATIONS.**

13 (a) CONSOLIDATION OF PROMULGATION TO ONCE A
14 MONTH.—

15 (1) IN GENERAL.—Section 1871 (42 U.S.C.
16 1395hh) is amended by adding at the end the fol-
17 lowing new subsection:

18 “(d) The Secretary shall issue proposed or final (in-
19 cluding interim final) regulations to carry out this title
20 only on one business day of every month unless publication
21 on another date is necessary to comply with requirements
22 under law.”.

23 (2) REPORT ON PUBLICATION OF REGULATIONS
24 ON A QUARTERLY BASIS.—Not later than 3 years
25 after the date of the enactment of this Act, the Sec-

1 retary of Health and Human Services shall submit
2 to Congress a report on the feasibility of requiring
3 that regulations described in section 1871(d) of the
4 Social Security Act only be promulgated on a single
5 day every calendar quarter.

6 (3) EFFECTIVE DATE.—The amendment made
7 by paragraph (1) shall apply to regulations promul-
8 gated on or after the date that is 30 days after the
9 date of the enactment of this Act.

10 (b) REGULAR TIMELINE FOR PUBLICATION OF
11 FINAL RULES.—

12 (1) IN GENERAL.—Section 1871(a) (42 U.S.C.
13 1395hh(a)) is amended by adding at the end the fol-
14 lowing new paragraph:

15 “(3) The Secretary, in consultation with the Director
16 of the Office of Management and Budget, shall establish
17 a regular timeline for the publication of final regulations
18 based on the previous publication of a proposed regulation
19 or an interim final regulation. Such timeline may vary
20 among different regulations based on differences in the
21 complexity of the regulation, the number and scope of
22 comments received, and other relevant factors. In the case
23 of interim final regulations, upon the expiration of the reg-
24 ular timeline established under this paragraph for the pub-
25 lication of a final regulation after opportunity for public

1 comment, the interim final regulation shall not continue
2 in effect unless the Secretary publishes a notice of continu-
3 ation of the regulation that includes an explanation of why
4 the regular timeline was not complied with. If such a no-
5 tice is published, the regular timeline for publication of
6 the final regulation shall be treated as having begun again
7 as of the date of publication of the notice.”.

8 (2) EFFECTIVE DATE.—The amendment made
9 by paragraph (1) shall take effect on the date of the
10 enactment of this Act. The Secretary of Health and
11 Human Services shall provide for an appropriation
12 transition to take into account the backlog of pre-
13 viously published interim final regulations.

14 (c) LIMITATIONS ON NEW MATTER IN FINAL REGU-
15 LATIONS.—

16 (1) IN GENERAL.—Section 1871(a) (42 U.S.C.
17 1395hh(a)), as amended by subsection (b), is further
18 amended by adding at the end the following new
19 paragraph:

20 “(4) Insofar as a final regulation (other than
21 an interim final regulation) includes a provision that
22 is not a logical outgrowth of the relevant notice of
23 proposed rulemaking relating to such regulation,
24 that provision shall be treated as a proposed regula-
25 tion and shall not take effect until there is the fur-

1 ther opportunity for public comment and a publica-
2 tion of the provision again as a final regulation.”.

3 (2) EFFECTIVE DATE.—The amendment made
4 by paragraph (1) shall apply to final regulations
5 published on or after the date of the enactment of
6 this Act.

7 **SEC. 3. COMPLIANCE WITH CHANGES IN REGULATIONS**
8 **AND POLICIES.**

9 (a) NO RETROACTIVE APPLICATION OF SUB-
10 STANTIVE CHANGES; TIMELINE FOR COMPLIANCE WITH
11 SUBSTANTIVE CHANGES AFTER NOTICE.—Section 1871
12 (42 U.S.C. 1395hh), as amended by section 2(a), is
13 amended by adding at the end the following new sub-
14 section:

15 “(e)(1)(A) A substantive change in regulations, man-
16 ual instructions, interpretative rules, statements of policy,
17 or guidelines of general applicability under this title shall
18 not be applied (by extrapolation or otherwise) retroactively
19 to items and services furnished before the date the change
20 was issued, unless the Secretary determines that such ret-
21 roactive application would have a positive impact on bene-
22 ficiaries or providers of services, physicians, practitioners,
23 and other suppliers or would be necessary to comply with
24 statutory requirements.

1 “(B) No compliance action shall be made against a
2 provider of services, physician, practitioner, or other sup-
3 plier with respect to noncompliance with such a sub-
4 stantive change for items and services furnished on or be-
5 fore the date that is 30 days after the date of issuance
6 of the change, unless the Secretary provides otherwise.”.

7 (b) RELIANCE ON GUIDANCE.—Section 1871(e), as
8 added by subsection (a), is further amended by adding at
9 the end the following new paragraph:

10 “(2) If—

11 “(A) a provider of services, physician, practi-
12 tioner, or other supplier follows the written guidance
13 provided by the Secretary or by a medicare con-
14 tractor (as defined in section 1889(f)) acting within
15 the scope of the contractor’s contract authority with
16 respect to the furnishing of items or services and
17 submission of a claim for benefits for such items or
18 services;

19 “(B) the Secretary determines that the provider
20 of services, physician, practitioner, or supplier has
21 accurately presented the circumstances relating to
22 such items, services, and claim to the contractor in
23 writing; and

24 “(C) the guidance was in error;

1 the provider of services, physician, practitioner or supplier
 2 shall not be subject to any sanction if the provider of serv-
 3 ices, physician, practitioner, or supplier reasonably relied
 4 on such guidance.”.

5 **SEC. 4. INCREASED FLEXIBILITY IN MEDICARE ADMINIS-**
 6 **TRATION.**

7 (a) CONSOLIDATION AND FLEXIBILITY IN MEDICARE
 8 ADMINISTRATION.—

9 (1) IN GENERAL.—Title XVIII is amended by
 10 inserting after section 1874 the following new sec-
 11 tion:

12 “CONTRACTS WITH MEDICARE ADMINISTRATIVE
 13 CONTRACTORS

14 “SEC. 1874A. (a) AUTHORITY.—

15 “(1) AUTHORITY TO ENTER INTO CON-
 16 TRACTS.—The Secretary may enter into contracts
 17 with any entity to serve as a medicare administrative
 18 contractor with respect to the performance of any or
 19 all of the functions described in paragraph (3) or
 20 parts of those functions (or, to the extent provided
 21 in a contract, to secure performance thereof by other
 22 entities).

23 “(2) MEDICARE ADMINISTRATIVE CONTRACTOR
 24 DEFINED.—For purposes of this title and title XI—

25 “(A) IN GENERAL.—The term ‘medicare
 26 administrative contractor’ means an agency, or-

ganization, or other person with a contract under this section.

“(B) APPROPRIATE MEDICARE ADMINISTRATIVE CONTRACTOR.—With respect to the performance of a particular function or activity in relation to an individual entitled to benefits under part A or enrolled under part B, or both, a specific provider of services, physician, practitioner, or supplier (or class of such providers of services, physicians, practitioners, or suppliers), the ‘appropriate’ medicare administrative contractor is the medicare administrative contractor that has a contract under this section with respect to the performance of that function or activity in relation to that individual, provider of services, physician, practitioner, or supplier or class of provider of services, physician, practitioner, or supplier.

“(3) FUNCTIONS DESCRIBED.—The functions referred to in paragraph (1) are payment functions, provider services functions, and beneficiary services functions as follows:

“(A) DETERMINATION OF PAYMENT AMOUNTS.—Determining (subject to the provisions of section 1878 and to such review by the

1 Secretary as may be provided for by the con-
2 tracts) the amount of the payments required
3 pursuant to this title to be made to providers
4 of services, physicians, practitioners, and sup-
5 pliers.

6 “(B) MAKING PAYMENTS.—Making pay-
7 ments described in subparagraph (A).

8 “(C) BENEFICIARY EDUCATION AND AS-
9 SISTANCE.—Serving as a center for, and com-
10 municating to individuals entitled to benefits
11 under part A or enrolled under part B, or both,
12 with respect to education and outreach for
13 those individuals, and assistance with specific
14 issues, concerns or problems of those individ-
15 uals.

16 “(D) PROVIDER CONSULTATIVE SERV-
17 ICES.—Providing consultative services to insti-
18 tutions, agencies, and other persons to enable
19 them to establish and maintain fiscal records
20 necessary for purposes of this title and other-
21 wise to qualify as providers of services, physi-
22 cians, practitioners, or suppliers.

23 “(E) COMMUNICATION WITH PRO-
24 VIDERS.—Serving as a center for, and commu-
25 nicating to providers of services, physicians,

1 practitioners, and suppliers, any information or
2 instructions furnished to the medicare adminis-
3 trative contractor by the Secretary, and serving
4 as a channel of communication from such pro-
5 viders, physicians, practitioners, and suppliers
6 to the Secretary.

7 “(F) PROVIDER EDUCATION AND TECH-
8 NICAL ASSISTANCE.—Performing the functions
9 described in subsections (e) and (f), relating to
10 provider education, training, and technical as-
11 sistance.

12 “(G) ADDITIONAL FUNCTIONS.—Per-
13 forming such other functions as are necessary
14 to carry out the purposes of this title.

15 “(4) RELATIONSHIP TO MIP CONTRACTS.—

16 “(A) NONDUPLICATION OF DUTIES.—In
17 entering into contracts under this section, the
18 Secretary shall assure that functions of medi-
19 care administrative contractors in carrying out
20 activities under parts A and B do not duplicate
21 functions carried out under the Medicare Integ-
22 rity Program under section 1893. The previous
23 sentence shall not apply with respect to the ac-
24 tivity described in section 1893(b)(5) (relating
25 to prior authorization of certain items of dura-

1 ble medical equipment under section
2 1834(a)(15)).

3 “(B) CONSTRUCTION.—An entity shall not
4 be treated as a medicare administrative con-
5 tractor merely by reason of having entered into
6 a contract with the Secretary under section
7 1893.

8 “(b) CONTRACTING REQUIREMENTS.—

9 “(1) USE OF COMPETITIVE PROCEDURES.—

10 “(A) IN GENERAL.—Except as provided in
11 laws with general applicability to Federal acqui-
12 sition and procurement or in subparagraph (B),
13 the Secretary shall use competitive procedures
14 when entering into contracts with medicare ad-
15 ministrative contractors under this section.

16 “(B) RENEWAL OF CONTRACTS.—The Sec-
17 retary may renew a contract with a medicare
18 administrative contractor under this section
19 from term to term without regard to section 5
20 of title 41, United States Code, or any other
21 provision of law requiring competition, if the
22 medicare administrative contractor has met or
23 exceeded the performance requirements applica-
24 ble with respect to the contract and contractor,
25 except that the Secretary shall provide for the

1 application of competitive procedures under
2 such a contract not less frequently than once
3 every four years.

4 “(C) TRANSFER OF FUNCTIONS.—Func-
5 tions may be transferred among medicare ad-
6 ministrative contractors without regard to any
7 provision of law requiring competition. The Sec-
8 retary shall ensure that performance quality is
9 considered in such transfers.

10 “(D) INCENTIVES FOR QUALITY.—The
11 Secretary shall provide incentives for medicare
12 administrative contractors to provide quality
13 service and to promote efficiency.

14 “(2) COMPLIANCE WITH REQUIREMENTS.—No
15 contract under this section shall be entered into with
16 any medicare administrative contractor unless the
17 Secretary finds that such medicare administrative
18 contractor will perform its obligations under the con-
19 tract efficiently and effectively and will meet such
20 requirements as to financial responsibility, legal au-
21 thority, and other matters as the Secretary finds
22 pertinent.

23 “(3) DEVELOPMENT OF SPECIFIC PERFORM-
24 ANCE REQUIREMENTS.—In developing contract per-
25 formance requirements, the Secretary shall develop

1 performance requirements to carry out the specific
2 requirements applicable under this title to a function
3 described in subsection (a)(3).

4 “(4) INFORMATION REQUIREMENTS.—The Sec-
5 retary shall not enter into a contract with a medi-
6 care administrative contractor under this section un-
7 less the contractor agrees—

8 “(A) to furnish to the Secretary such time-
9 ly information and reports as the Secretary may
10 find necessary in performing his functions
11 under this title; and

12 “(B) to maintain such records and afford
13 such access thereto as the Secretary finds nec-
14 essary to assure the correctness and verification
15 of the information and reports under subpara-
16 graph (A) and otherwise to carry out the pur-
17 poses of this title.

18 “(5) SURETY BOND.—A contract with a medi-
19 care administrative contractor under this section
20 may require the medicare administrative contractor,
21 and any of its officers or employees certifying pay-
22 ments or disbursing funds pursuant to the contract,
23 or otherwise participating in carrying out the con-
24 tract, to give surety bond to the United States in

1 such amount as the Secretary may deem appro-
2 priate.

3 “(c) TERMS AND CONDITIONS.—

4 “(1) IN GENERAL.—A contract with any medi-
5 care administrative contractor under this section
6 may contain such terms and conditions as the Sec-
7 retary finds necessary or appropriate and may pro-
8 vide for advances of funds to the medicare adminis-
9 trative contractor for the making of payments by it
10 under subsection (a)(3)(B).

11 “(2) PROHIBITION ON MANDATES FOR CERTAIN
12 DATA COLLECTION.—The Secretary may not require,
13 as a condition of entering into a contract under this
14 section, that the medicare administrative contractor
15 match data obtained other than in its activities
16 under this title with data used in the administration
17 of this title for purposes of identifying situations in
18 which the provisions of section 1862(b) may apply.

19 “(d) LIMITATION ON LIABILITY OF MEDICARE AD-
20 MINISTRATIVE CONTRACTORS AND CERTAIN OFFICERS.—

21 “(1) CERTIFYING OFFICER.—No individual des-
22 ignated pursuant to a contract under this section as
23 a certifying officer shall, in the absence of negligence
24 or intent to defraud the United States, be liable with

1 respect to any payments certified by the individual
2 under this section.

3 “(2) DISBURSING OFFICER.—No disbursing of-
4 ficer shall, in the absence of negligence or intent to
5 defraud the United States, be liable with respect to
6 any payment by such officer under this section if it
7 was based upon an authorization (which meets the
8 applicable requirements for such internal controls es-
9 tablished by the Comptroller General) of a certifying
10 officer designated as provided in paragraph (1) of
11 this subsection.

12 “(3) LIABILITY OF MEDICARE ADMINISTRATIVE
13 CONTRACTOR.—A medicare administrative con-
14 tractor shall be liable to the United States for a pay-
15 ment referred to in paragraph (1) or (2) if, in con-
16 nection with such payment, an individual referred to
17 in either such paragraph acted with negligence or in-
18 tent to defraud the United States.”.

19 (2) CONSIDERATION OF INCORPORATION OF
20 CURRENT LAW STANDARDS.—In developing contract
21 performance requirements under section 1874A(b)
22 of the Social Security Act, as inserted by paragraph
23 (1), the Secretary of Health and Human Services
24 shall consider inclusion of the performance stand-
25 ards described in sections 1816(f)(2) of such Act

1 (relating to timely processing of reconsiderations and
 2 applications for exemptions) and section
 3 1842(b)(2)(B) of such Act (relating to timely review
 4 of determinations and fair hearing requests), as such
 5 sections were in effect before the date of the enact-
 6 ment of this Act.

7 (b) CONFORMING AMENDMENTS TO SECTION 1816
 8 (RELATING TO FISCAL INTERMEDIARIES).—Section 1816
 9 (42 U.S.C. 1395h) is amended as follows:

10 (1) The heading is amended to read as follows:

11 “PROVISIONS RELATING TO THE ADMINISTRATION OF
 12 PART A”.

13 (2) Subsection (a) is amended to read as fol-
 14 lows:

15 “(a) The administration of this part shall be con-
 16 ducted through contracts with medicare administrative
 17 contractors under section 1874A.”.

18 (3) Subsection (b) is repealed.

19 (4) Subsection (c) is amended—

20 (A) by striking paragraph (1); and

21 (B) in each of paragraphs (2)(A) and
 22 (3)(A), by striking “agreement under this sec-
 23 tion” and inserting “contract under section
 24 1874A that provides for making payments
 25 under this part”.

26 (5) Subsections (d) through (i) are repealed.

1 (6) Subsections (j) and (k) are each amended—

2 (A) by striking “An agreement with an
3 agency or organization under this section” and
4 inserting “A contract with a medicare adminis-
5 trative contractor under section 1874A with re-
6 spect to the administration of this part”; and

7 (B) by striking “such agency or organiza-
8 tion” and inserting “such medicare administra-
9 tive contractor” each place it appears.

10 (7) Subsection (l) is repealed.

11 (c) CONFORMING AMENDMENTS TO SECTION 1842
12 (RELATING TO CARRIERS).—Section 1842 (42 U.S.C.
13 1395u) is amended as follows:

14 (1) The heading is amended to read as follows:

15 “PROVISIONS RELATING TO THE ADMINISTRATION OF
16 PART B”.

17 (2) Subsection (a) is amended to read as fol-
18 lows:

19 “(a) The administration of this part shall be con-
20 ducted through contracts with medicare administrative
21 contractors under section 1874A.”.

22 (3) Subsection (b) is amended—

23 (A) by striking paragraph (1);

24 (B) in paragraph (2)—

25 (i) by striking subparagraphs (A) and

26 (B);

1 (ii) in subparagraph (C), by striking
2 “carriers” and inserting “medicare admin-
3 istrative contractors”; and

4 (iii) by striking subparagraphs (D)
5 and (E);
6 (C) in paragraph (3)—

7 (i) in the matter before subparagraph
8 (A), by striking “Each such contract shall
9 provide that the carrier” and inserting
10 “The Secretary”;

11 (ii) in subparagraph (B), in the mat-
12 ter before clause (i), by striking “to the
13 policyholders and subscribers of the car-
14 rier” and inserting “to the policyholders
15 and subscribers of the medicare adminis-
16 trative contractor”;

17 (iii) by striking subparagraphs (C),
18 (D), and (E);

19 (iv) in subparagraph (H)—

20 (I) by striking “it” and inserting
21 “the Secretary”; and

22 (II) by striking “carrier” and in-
23 serting “medicare administrative con-
24 tractor”; and

1 (v) in the seventh sentence, by insert-
2 ing “medicare administrative contractor,”
3 after “carrier,”; and

4 (D) by striking paragraph (5); and

5 (E) in paragraph (7) and succeeding para-
6 graphs, by striking “the carrier” and inserting
7 “the Secretary” each place it appears.

8 (4) Subsection (c) is amended—

9 (A) by striking paragraph (1);

10 (B) in paragraph (2), by striking “contract
11 under this section which provides for the dis-
12 bursement of funds, as described in subsection
13 (a)(1)(B),” and inserting “contract under sec-
14 tion 1874A that provides for making payments
15 under this part shall provide that the medicare
16 administrative contractor”;

17 (C) in paragraph (4), by striking “a car-
18 rier” and inserting “medicare administrative
19 contractor”;

20 (D) in paragraph (5), by striking “contract
21 under this section which provides for the dis-
22 bursement of funds, as described in subsection
23 (a)(1)(B), shall require the carrier” and insert-
24 ing “contract under section 1874A that pro-
25 vides for making payments under this part shall

1 require the medicare administrative con-
2 tractor”; and

3 (E) by striking paragraph (6).

4 (5) Subsections (d), (e), and (f) are repealed.

5 (6) Subsection (g) is amended by striking “car-
6 rier or carriers” and inserting “medicare administra-
7 tive contractor or contractors”.

8 (7) Subsection (h) is amended—

9 (A) in paragraph (2)—

10 (i) by striking “Each carrier having
11 an agreement with the Secretary under
12 subsection (a)” and inserting “The Sec-
13 retary”; and

14 (ii) by striking “Each such carrier”
15 and inserting “The Secretary”; and

16 (B) in paragraph (3)(A)—

17 (i) by striking “a carrier having an
18 agreement with the Secretary under sub-
19 section (a)” and inserting “medicare ad-
20 ministrative contractor having a contract
21 under section 1874A that provides for
22 making payments under this part”; and

23 (ii) by striking “such carrier” and in-
24 serting “such contractor”.

25 (d) EFFECTIVE DATE; TRANSITION RULE.—

1 (1) EFFECTIVE DATE.—Except as otherwise
2 provided in this subsection, the amendments made
3 by this section shall take effect on October 1, 2003,
4 and the Secretary of Health and Human Services is
5 authorized to take such steps before such date as
6 may be necessary to implement such amendments on
7 a timely basis.

8 (2) GENERAL TRANSITION RULES.—(A) The
9 Secretary shall take such steps as are necessary to
10 provide for an appropriate transition from contracts
11 under section 1816 and section 1842 of the Social
12 Security Act (42 U.S.C. 1395h, 1395u) to contracts
13 under section 1874A, as added by subsection (a)(1).

14 (B) Any such contract under such sections
15 1816 or 1842 whose periods begin before or during
16 the 1-year period that begins on the first day of the
17 fourth calendar month that begins after the date of
18 enactment of this Act may be entered into without
19 regard to any provision of law requiring the use of
20 competitive procedures.

21 (3) AUTHORIZING CONTINUATION OF MIP
22 FUNCTIONS UNDER CURRENT CONTRACTS AND
23 AGREEMENTS AND UNDER ROLLOVER CONTRACTS.—
24 The provisions contained in the exception in section
25 1893(d)(2) of the Social Security Act (42 U.S.C.

1 1395ddd(d)(2)) shall continue to apply notwith-
 2 standing the amendments made by this section, and
 3 any reference in such provisions to an agreement or
 4 contract shall be deemed to include a contract under
 5 section 1874A of such Act, as inserted by subsection
 6 (a)(1), that continues the activities referred to in
 7 such provisions.

8 (e) REFERENCES.—On and after the effective date
 9 provided under subsection (d), any reference to a fiscal
 10 intermediary or carrier under title XI or XVIII of the So-
 11 cial Security Act (or any regulation, manual instruction,
 12 interpretative rule, statement of policy, or guideline issued
 13 to carry out such titles) shall be deemed a reference to
 14 an appropriate medicare administrative contractor (as
 15 provided under section 1874A of the Social Security Act).

16 (f) SECRETARIAL SUBMISSION OF LEGISLATIVE PRO-
 17 POSAL.—Not later than 6 months after the date of the
 18 enactment of this Act, the Secretary of Health and
 19 Human Services shall submit to the appropriate commit-
 20 tees of Congress a legislative proposal providing for such
 21 technical and conforming amendments in the law as are
 22 required by the provisions of this section.

23 **SEC. 5. PROVIDER EDUCATION AND TECHNICAL ASSIST-**
 24 **ANCE.**

25 (a) COORDINATION OF EDUCATION FUNDING.—

1 (1) IN GENERAL.—The Social Security Act is
2 amended by inserting after section 1888 the fol-
3 lowing new section:

4 “PROVIDER EDUCATION AND TECHNICAL ASSISTANCE

5 “SEC. 1889. (a) COORDINATION OF EDUCATION
6 FUNDING.—The Secretary shall coordinate the edu-
7 cational activities provided through medicare contractors
8 (as defined in subsection (i), including under section
9 1893) in order to maximize the effectiveness of Federal
10 education efforts for providers of services, physicians,
11 practitioners, and suppliers.”.

12 (2) EFFECTIVE DATE.—The amendment made
13 by paragraph (1) shall take effect on the date of the
14 enactment of this Act.

15 (3) REPORT.—Not later than October 1, 2002,
16 the Secretary of Health and Human Services shall
17 submit to Congress a report that includes a descrip-
18 tion and evaluation of the steps taken to coordinate
19 the funding of provider education under section
20 1889(a) of the Social Security Act, as added by
21 paragraph (1).

22 (b) INCENTIVES TO IMPROVE CONTRACTOR PER-
23 FORMANCE.—

24 (1) IN GENERAL.—Section 1874A, as added by
25 section 4(a)(1), is amended by adding at the end the
26 following new subsection:

1 “(e) INCENTIVES TO IMPROVE CONTRACTOR PER-
2 FORMANCE IN PROVIDER EDUCATION AND OUTREACH.—

3 “(1) METHODOLOGY TO MEASURE CONTRACTOR
4 ERROR RATES.—In order to give medicare adminis-
5 trative contractors an incentive to implement effec-
6 tive education and outreach programs for providers
7 of services, physicians, practitioners, and suppliers,
8 the Secretary shall develop and implement by Octo-
9 ber 1, 2002, a methodology to measure the specific
10 claims payment error rates of such contractors in
11 the processing or reviewing of medicare claims.

12 “(2) IDENTIFICATION OF BEST PRACTICES.—
13 The Secretary shall identify the best practices devel-
14 oped by individual medicare administrative contrac-
15 tors for educating providers of services, physicians,
16 practitioners, and suppliers and how to encourage
17 the use of such best practices nationwide.”.

18 (2) REPORT.—Not later than October 1, 2003,
19 the Secretary of Health and Human Services shall
20 submit to Congress a report that describes how the
21 Secretary intends to use the methodology developed
22 under section 1874A(e)(1) of the Social Security
23 Act, as added by paragraph (1), in assessing medi-
24 care contractor performance in implementing effec-
25 tive education and outreach programs, including

1 whether to use such methodology as the basis for
2 performance bonuses.

3 (c) PROVISION OF ACCESS TO AND PROMPT RE-
4 SPONSES FROM MEDICARE ADMINISTRATIVE CONTRAC-
5 TORS.—

6 (1) IN GENERAL.—Section 1874A, as added by
7 section 4(a)(1) and as amended by subsection (b), is
8 further amended by adding at the end the following
9 new subsection:

10 “(f) RESPONSE TO INQUIRIES; TOLL-FREE LINES.—

11 “(1) CONTRACTOR RESPONSIBILITY.—Each
12 medicare administrative contractor shall, for those
13 providers of services, physicians, practitioners, and
14 suppliers which submit claims to the contractor for
15 claims processing—

16 “(A) respond in a clear, concise, and accu-
17 rate manner to specific billing and cost report-
18 ing questions of providers of services, physi-
19 cians, practitioners, and suppliers;

20 “(B) maintain a toll-free telephone number
21 at which providers of services, physicians, prac-
22 titioners, and suppliers may obtain information
23 regarding billing, coding, and other appropriate
24 information under this title;

1 “(C) maintain a system for identifying who
2 provides the information referred to in subpara-
3 graphs (A) and (B); and

4 “(D) monitor the accuracy, consistency,
5 and timeliness of the information so provided.

6 “(2) EVALUATION.—In conducting evaluations
7 of individual medicare administrative contractors,
8 the Secretary shall take into account the results of
9 the monitoring conducted under paragraph (1)(D).
10 The Secretary shall, in consultation with organiza-
11 tions representing providers of services, physicians,
12 practitioners, and suppliers, establish standards re-
13 lating to the accuracy, consistency, and timeliness of
14 the information so provided.”.

15 (2) EFFECTIVE DATE.—The amendment made
16 by paragraph (1) shall take effect October 1, 2002.

17 (d) IMPROVED PROVIDER EDUCATION AND TRAIN-
18 ING.—

19 (1) IN GENERAL.—Section 1889, as added by
20 subsection (a), is amended by adding at the end the
21 following new subsections:

22 “(b) ENHANCED EDUCATION AND TRAINING.—

23 “(1) ADDITIONAL RESOURCES.—For each of
24 fiscal years 2003 and 2004, there are authorized to
25 be appropriated to the Secretary (in appropriate

1 part from the Federal Hospital Insurance Trust
2 Fund and the Federal Supplementary Medical In-
3 surance Trust Fund) \$10,000,000 .

4 “(2) USE.—The funds made available under
5 paragraph (1) shall be used to increase the conduct
6 by medicare contractors of education and training of
7 providers of services, physicians, practitioners, and
8 suppliers regarding billing, coding, and other appro-
9 priate items.

10 “(c) TAILORING EDUCATION AND TRAINING ACTIVI-
11 TIES FOR SMALL PROVIDERS OR SUPPLIERS.—

12 “(1) IN GENERAL.—Insofar as a medicare con-
13 tractor conducts education and training activities, it
14 shall tailor such activities to meet the special needs
15 of small providers of services or suppliers (as defined
16 in paragraph (2)).

17 “(2) SMALL PROVIDER OF SERVICES OR SUP-
18 PLIER.—In this subsection, the term ‘small provider
19 of services or supplier’ means—

20 “(A) an institutional provider of services
21 with fewer than 25 full-time-equivalent employ-
22 ees; or

23 “(B) a physician, practitioner, or supplier
24 with fewer than 10 full-time-equivalent employ-
25 ees.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall take effect on October 1,
3 2002.

4 (e) REQUIREMENT TO MAINTAIN INTERNET
5 SITES.—

6 (1) IN GENERAL.—Section 1889, as added by
7 subsection (a) and as amended by subsection (d), is
8 further amended by adding at the end the following
9 new subsection:

10 “(c) INTERNET SITES; FAQs.—The Secretary, and
11 each medicare contractor insofar as it provides services
12 (including claims processing) for providers of services,
13 physicians, practitioners, or suppliers, shall maintain an
14 Internet site which provides answers in an easily accessible
15 format to frequently asked questions relating to providers
16 of services, physicians, practitioners, and suppliers under
17 the programs under this title and title XI insofar as it
18 relates to such programs.”.

19 (2) EFFECTIVE DATE.—The amendment made
20 by paragraph (1) shall take effect on October 1,
21 2002.

22 (f) ADDITIONAL PROVIDER EDUCATION PROVI-
23 SIONS.—

24 (1) IN GENERAL.—Section 1889, as added by
25 subsection (a) and as amended by subsections (d)

1 and (e), is further amended by adding at the end
2 the following new subsections:

3 “(d) ENCOURAGEMENT OF PARTICIPATION IN EDU-
4 CATION PROGRAM ACTIVITIES.—A medicare contractor
5 may not use a record of attendance at (or failure to at-
6 tend) educational activities or other information gathered
7 during an educational program conducted under this sec-
8 tion or otherwise by the Secretary to select or track pro-
9 viders of services, physicians, practitioners, or suppliers
10 for the purpose of conducting any type of audit or prepay-
11 ment review.

12 “(e) CONSTRUCTION.—Nothing in this section or sec-
13 tion 1893(g) shall be construed as providing for disclosure
14 by a medicare contractor—

15 “(1) of the screens used for identifying claims
16 that will be subject to medical review; or

17 “(2) of information that would compromise
18 pending law enforcement activities or reveal findings
19 of law enforcement-related audits.

20 “(f) DEFINITIONS.—For purposes of this section, the
21 term ‘medicare contractor’ includes the following:

22 “(1) A medicare administrative contractor with
23 a contract under section 1874A, including a fiscal
24 intermediary with a contract under section 1816 and
25 a carrier with a contract under section 1842.

1 “(2) An eligible entity with a contract under
2 section 1893.

3 Such term does not include, with respect to activities of
4 a specific provider of services, physician, practitioner, or
5 supplier an entity that has no authority under this title
6 or title IX with respect to such activities and such provider
7 of services, physician, practitioner, or supplier.”.

8 (2) EFFECTIVE DATE.—The amendment made
9 by paragraph (1) shall take effect on the date of the
10 enactment of this Act.

11 **SEC. 6. SMALL PROVIDER TECHNICAL ASSISTANCE DEM-**
12 **ONSTRATION PROGRAM.**

13 (a) ESTABLISHMENT.—

14 (1) IN GENERAL.—The Secretary of Health and
15 Human Services shall establish a demonstration pro-
16 gram (in this section referred to as the “demonstra-
17 tion program”) under which technical assistance is
18 made available, upon request on a voluntary basis,
19 to small providers of services or suppliers to evaluate
20 their billing and related systems for compliance with
21 the applicable requirements of the programs under
22 medicare program under title XVIII of the Social
23 Security Act (including provisions of title XI of such
24 Act insofar as they relate to such title and are not

1 administered by the Office of the Inspector General
2 of the Department of Health and Human Services).

3 (2) SMALL PROVIDERS OF SERVICES OR SUP-
4 PLIERS.—In this section, the term “small providers
5 of services or suppliers” means—

6 (A) an institutional provider of services
7 with fewer than 25 full-time-equivalent employ-
8 ees; or

9 (B) a physician, practitioner, or supplier
10 with fewer than 10 full-time-equivalent employ-
11 ees.

12 (b) QUALIFICATION OF CONTRACTORS.—In con-
13 ducting the demonstration program, the Secretary of
14 Health and Human Services shall enter into contracts
15 with qualified organizations (such as peer review organiza-
16 tions or entities described in section 1889(f)(2) of the So-
17 cial Security Act, as inserted by section 5(f)(1)) with ap-
18 propriate expertise with billing systems of the full range
19 of providers of services, physicians, practitioners, and sup-
20 pliers to provide the technical assistance. In awarding such
21 contracts, the Secretary shall consider any prior investiga-
22 tions of the entity’s work by the Inspector General of De-
23 partment of Health and Human Services or the Comp-
24 troller General of the United States.

1 (c) DESCRIPTION OF TECHNICAL ASSISTANCE.—The
2 technical assistance provided under the demonstration
3 program shall include a direct and in-person examination
4 of billing systems and internal controls of small providers
5 of services or suppliers to determine program compliance
6 and to suggest more efficient or effective means of achiev-
7 ing such compliance.

8 (d) AVOIDANCE OF RECOVERY ACTIONS FOR PROB-
9 LEMS IDENTIFIED AS CORRECTED.—The Secretary of
10 Health and Human Services may provide that, absent evi-
11 dence of fraud and notwithstanding any other provision
12 of law, any errors found in a compliance review for a small
13 provider of services or supplier that participates in the
14 demonstration program shall not be subject to recovery
15 action if the technical assistance personnel under the pro-
16 gram determine that—

17 (1) the problem that is the subject of the com-
18 pliance review has been corrected to their satisfac-
19 tion within 30 days of the date of the visit by such
20 personnel to the small provider of services or sup-
21 plier; and

22 (2) such problem remains corrected for such pe-
23 riod as is appropriate.

24 (e) GAO EVALUATION.—Not later than 2 years after
25 the date of the date the demonstration program is first

1 implemented, the Comptroller General, in consultation
2 with the Inspector General of the Department of Health
3 and Human Services, shall conduct an evaluation of the
4 demonstration program. The evaluation shall include a de-
5 termination of whether claims error rates are reduced for
6 small providers of services or suppliers who participated
7 in the program. The Comptroller General shall submit a
8 report to the Secretary and the Congress on such evalua-
9 tion and shall include in such report recommendations re-
10 garding the continuation or extension of the demonstra-
11 tion program.

12 (f) FINANCIAL PARTICIPATION BY PROVIDERS.—The
13 provision of technical assistance to a small provider of
14 services or supplier under the demonstration program is
15 conditioned upon the small provider of services or supplier
16 paying for 25 percent of the cost of the technical assist-
17 ance.

18 (g) AUTHORIZATION OF APPROPRIATIONS.—There
19 are authorized to be appropriated to the Secretary of
20 Health and Human Services (in appropriate part from the
21 Federal Hospital Insurance Trust Fund and the Federal
22 Supplementary Medical Insurance Trust Fund) to carry
23 out the demonstration program—

24 (1) for fiscal year 2003, \$1,000,000, and

25 (2) for fiscal year 2004, \$6,000,000.

1 **SEC. 7. MEDICARE PROVIDER OMBUDSMAN.**

2 (a) IN GENERAL.—Section 1868 (42 U.S.C. 1395ee)
3 is amended—

4 (1) by adding at the end of the heading the fol-
5 lowing: “; MEDICARE PROVIDER OMBUDSMAN”;

6 (2) by inserting “PRACTICING PHYSICIANS AD-
7 VISORY COUNCIL.—(1)” after “(a)”;

8 (3) in paragraph (1), as so redesignated under
9 paragraph (2), by striking “in this section” and in-
10 serting “in this subsection”;

11 (4) by redesignating subsections (b) and (c) as
12 paragraphs (2) and (3), respectively; and

13 (5) by adding at the end the following new sub-
14 section:

15 “(b) MEDICARE PROVIDER OMBUDSMAN.—The Sec-
16 retary shall appoint a Medicare Provider Ombudsman.
17 The Ombudsman shall—

18 “(1) provide assistance, on a confidential basis,
19 to providers of services, physicians, practitioners,
20 and suppliers with respect to complaints, grievances,
21 and requests for information concerning the pro-
22 grams under this title (including provisions of title
23 XI insofar as they relate to this title and are not ad-
24 ministered by the Office of the Inspector General of
25 the Department of Health and Human Services) and
26 in the resolution of unclear or conflicting guidance

1 given by the Secretary and medicare contractors to
2 such providers of services, physicians, practitioners,
3 and suppliers regarding such programs and provi-
4 sions and requirements under this title and such
5 provisions; and

6 “(2) submit recommendations to the Secretary
7 for improvement in the administration of this title
8 and such provisions, including—

9 “(A) recommendations to respond to recur-
10 ring patterns of confusion in this title and such
11 provisions (including recommendations regard-
12 ing suspending imposition of sanctions where
13 there is widespread confusion in program ad-
14 ministration), and

15 “(B) recommendations to provide for an
16 appropriate and consistent response (including
17 not providing for audits) in cases of self-identi-
18 fied overpayments by providers of services, phy-
19 sicians, practitioners, and suppliers.”.

20 (b) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Secretary of
22 Health and Human Services (in appropriate part from the
23 Federal Hospital Insurance Trust Fund and the Federal
24 Supplementary Medical Insurance Trust Fund) to carry
25 out the provisions of subsection (b) of section 1868 (relat-

ing to the Medicare Provider Ombudsman), as added by subsection (a)(5), amounts as follows:

(1) For fiscal year 2002, such sums as are necessary.

(2) For fiscal year 2003, \$8,000,000.

(3) For fiscal year 2004, \$17,000,000.

(c) REPORT ON ADDITIONAL FUNDING.—Not later than October 1, 2003, the Secretary of Health and Human Services shall submit to Congress a report that includes the Secretary’s estimate of the amount of additional funding necessary to carry out such provisions of subsection (b) of section 1868, as so added, in fiscal year 2005 and subsequent fiscal years.

SEC. 8. PROVIDER APPEALS.

(a) MEDICARE ADMINISTRATIVE LAW JUDGES.—Section 1869 (42 U.S.C. 1395ff), as amended by section 521(a) of Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (114 Stat. 2763A–534), as enacted into law by section 1(a)(6) of Public Law 106–554, is amended by adding at the end the following new subsection:

“(g) MEDICARE ADMINISTRATIVE LAW JUDGES.—

“(1) TRANSITION PLAN.—Not later than October 1, 2003, the Commissioner of Social Security and the Secretary shall develop and implement a

1 plan under which administrative law judges respon-
2 sible solely for hearing cases under this title (and re-
3 lated provisions in title XI) shall be transferred from
4 the responsibility of the Commissioner and the So-
5 cial Security Administration to the Secretary and
6 the Department of Health and Human Services. The
7 plan shall include recommendations with respect
8 to—

9 “(A) the number of such administrative
10 law judges and support staff required to hear
11 and decide such cases in a timely manner; and

12 “(B) funding levels required for fiscal year
13 2004 and subsequent fiscal years under this
14 subsection to hear such cases in a timely man-
15 ner.

16 “(2) INCREASED FINANCIAL SUPPORT.—In ad-
17 dition to any amounts otherwise appropriated, there
18 are authorized to be appropriated (in appropriate
19 part from the Federal Hospital Insurance Trust
20 Fund and the Federal Supplementary Medical In-
21 surance Trust Fund) to the Secretary to increase
22 the number of administrative law judges under para-
23 graph (1) and to improve education and training op-
24 portunities for such judges and their staffs,
25 \$5,000,000 for fiscal year 2003 and such sums as

1 are necessary for fiscal year 2004 and each subse-
 2 quent fiscal year.”.

3 (b) PROCESS FOR EXPEDITED ACCESS TO JUDICIAL
 4 REVIEW.—

5 (1) IN GENERAL.—Section 1869(b) (42 U.S.C.
 6 1395ff(b)) as amended by Medicare, Medicaid, and
 7 SCHIP Benefits Improvement and Protection Act of
 8 2000 (114 Stat. 2763A–534), as enacted into law by
 9 section 1(a)(6) of Public Law 106–554, is
 10 amended—

11 (A) in paragraph (1)(A), by inserting “,
 12 subject to paragraph (2),” before “to judicial
 13 review of the Secretary’s final decision”; and

14 (B) by adding at the end the following new
 15 paragraph:

16 “(2) EXPEDITED ACCESS TO JUDICIAL RE-
 17 VIEW.—

18 “(A) IN GENERAL.—The Secretary shall
 19 establish a process under which a provider of
 20 service or supplier that furnishes an item or
 21 service or a beneficiary who has filed an appeal
 22 under paragraph (1) (other than an appeal filed
 23 under paragraph (1)(F)) may obtain access to
 24 judicial review when a review panel (described
 25 in subparagraph (D)), on its own motion or at

1 the request of the appellant, determines that it
2 does not have the authority to decide the ques-
3 tion of law or regulation relevant to the matters
4 in controversy and that there is no material
5 issue of fact in dispute. The appellant may
6 make such request only once with respect to a
7 question of law or regulation in a case of an
8 appeal.

9 “(B) PROMPT DETERMINATIONS.—If, after
10 or coincident with appropriately filing a request
11 for an administrative hearing, the appellant re-
12 quests a determination by the appropriate re-
13 view panel that no review panel has the author-
14 ity to decide the question of law or regulations
15 relevant to the matters in controversy and that
16 there is no material issue of fact in dispute and
17 if such request is accompanied by the docu-
18 ments and materials as the appropriate review
19 panel shall require for purposes of making such
20 determination, such review panel shall make a
21 determination on the request in writing within
22 60 days after the date such review panel re-
23 ceives the request and such accompanying docu-
24 ments and materials. Such a determination by
25 such review panel shall be considered a final de-

1 cision and not subject to review by the Sec-
2 retary.

3 “(C) ACCESS TO JUDICIAL REVIEW.—

4 “(i) IN GENERAL.—If the appropriate
5 review panel—

6 “(I) determines that there are no
7 material issues of fact in dispute and
8 that the only issue is one of law or
9 regulation that no review panel has
10 the authority to decide; or

11 “(II) fails to make such deter-
12 mination within the period provided
13 under subparagraph (B);

14 then the appellant may bring a civil action
15 as described in this subparagraph.

16 “(ii) DEADLINE FOR FILING.—Such
17 action shall be filed, in the case described
18 in—

19 “(I) clause (i)(I), within 60 days
20 of date of the determination described
21 in such subparagraph; or

22 “(II) clause (i)(II), within 60
23 days of the end of the period provided
24 under subparagraph (B) for the deter-
25 mination.

1 “(iii) VENUE.—Such action shall be
2 brought in the district court of the United
3 States for the judicial district in which the
4 appellant is located (or, in the case of an
5 action brought jointly by more than one
6 applicant, the judicial district in which the
7 greatest number of applicants are located)
8 or in the district court for the District of
9 Columbia.

10 “(iv) INTEREST ON AMOUNTS IN CON-
11 TROVERSY.—Where a provider of services
12 or supplier seeks judicial review pursuant
13 to this paragraph, the amount in con-
14 troversy shall be subject to annual interest
15 beginning on the first day of the first
16 month beginning after the 60-day period
17 as determined pursuant to clause (ii) and
18 equal to the rate of interest on obligations
19 issued for purchase by the Federal Hos-
20 pital Insurance Trust Fund for the month
21 in which the civil action authorized under
22 this paragraph is commenced, to be award-
23 ed by the reviewing court in favor of the
24 prevailing party. No interest awarded pur-
25 suant to the preceding sentence shall be

1 deemed income or cost for the purposes of
2 determining reimbursement due providers
3 of services or suppliers under this Act.

4 “(D) REVIEW PANELS.—For purposes of
5 this subsection, a ‘review panel’ is an adminis-
6 trative law judge, the Departmental Appeals
7 Board, a qualified independent contractor (as
8 defined in subsection (c)(2)), or an entity des-
9 ignated by the Secretary for purposes of mak-
10 ing determinations under this paragraph.”.

11 (2) EFFECTIVE DATE.—The amendment made
12 by paragraph (1) shall apply to appeals filed on or
13 after October 1, 2002.

14 (c) REQUIRING FULL AND EARLY PRESENTATION OF
15 EVIDENCE.—

16 (1) IN GENERAL.—Section 1869(b) (42 U.S.C.
17 1395ff(b)), as amended by Medicare, Medicaid, and
18 SCHIP Benefits Improvement and Protection Act of
19 2000 (114 Stat. 2763A–534), as enacted into law by
20 section 1(a)(6) of Public Law 106–554, and as
21 amended by subsection (b), is further amended by
22 adding at the end the following new paragraph:

23 “(3) REQUIRING FULL AND EARLY PRESEN-
24 TATION OF EVIDENCE BY PROVIDERS.—A provider
25 of services or supplier may not introduce evidence in

1 any appeal under this section that was not presented
2 at the first external hearing or appeal at which it
3 could be introduced under this section, unless there
4 is good cause which precluded the introduction of
5 such evidence at a previous hearing or appeal.”.

6 (2) EFFECTIVE DATE.—The amendment made
7 by paragraph (1) shall take effect on October 1,
8 2002.

9 (d) PROVIDER APPEALS ON BEHALF OF DECEASED
10 BENEFICIARIES.—

11 (1) IN GENERAL.—Section 1869(b)(1)(C) (42
12 U.S.C. 1395ff(b)(1)(C)), as amended by Medicare,
13 Medicaid, and SCHIP Benefits Improvement and
14 Protection Act of 2000 (114 Stat. 2763A–534), as
15 enacted into law by section 1(a)(6) of Public Law
16 106–554, is amended by adding at the end the fol-
17 lowing: “The Secretary shall establish a process
18 under which, if such an individual is deceased, the
19 individual is deemed to have provided written con-
20 sent to the assignment of the individual’s right of
21 appeal under this section to the provider of services
22 or supplier of the item or service involved, so long
23 as the estate of the individual, and the individual’s
24 family and heirs, are not liable for paying for the
25 item or service and are not liable for any increased

1 coinsurance or deductible amounts resulting from
 2 any decision increasing the reimbursement amount
 3 for the provider of services or supplier.”.

4 (2) EFFECTIVE DATE.—Notwithstanding sec-
 5 tion 521(d) of the Medicare, Medicaid, and SCHIP
 6 Benefits Improvement and Protection Act of 2000,
 7 as enacted into law by section 1(a)(6) of Public Law
 8 106–554, the amendment made by paragraph (1)
 9 shall take effect on the date of the enactment of this
 10 Act.

11 **SEC. 9. RECOVERY OF OVERPAYMENTS AND PREPAYMENT**
 12 **REVIEW; ENROLLMENT OF PROVIDERS.**

13 (a) RECOVERY OF OVERPAYMENTS AND PREPAY-
 14 MENT REVIEW.—Section 1893 (42 U.S.C. 1395ddd) is
 15 amended by adding at the end the following new sub-
 16 sections:

17 “(f) RECOVERY OF OVERPAYMENTS AND PREPAY-
 18 MENT REVIEW.—

19 “(1) USE OF REPAYMENT PLANS.—

20 “(A) IN GENERAL.—If the repayment,
 21 within 30 days by a provider of services, physi-
 22 cian, practitioner, or other supplier, of an over-
 23 payment under this title would constitute a
 24 hardship (as defined in subparagraph (B)), sub-
 25 ject to subparagraph (C), the Secretary shall

1 enter into a plan (which meets terms and condi-
2 tions determined to be appropriate by the Sec-
3 retary) with the provider of services, physician,
4 practitioner, or supplier for the offset or repay-
5 ment of such overpayment over a period of not
6 longer than 3 years. Interest shall accrue on the
7 balance through the period of repayment.

8 “(B) HARDSHIP.—

9 “(i) IN GENERAL.—For purposes of
10 subparagraph (A), the repayment of an
11 overpayment (or overpayments) within 30
12 days is deemed to constitute a hardship
13 if—

14 “(I) in the case of a provider of
15 services that files cost reports, the ag-
16 gregate amount of the overpayments
17 exceeds 10 percent of the amount paid
18 under this title to the provider of
19 services for the cost reporting period
20 covered by the most recently sub-
21 mitted cost report; or

22 “(II) in the case of another pro-
23 vider of services, physician, practi-
24 tioner, or supplier, the aggregate
25 amount of the overpayments exceeds

1 10 percent of the amount paid under
2 this title to the provider of services or
3 supplier for the previous calendar
4 year.

5 “(ii) RULE OF APPLICATION.—The
6 Secretary shall establish rules for the ap-
7 plication of this subparagraph in the case
8 of a provider of services, physician, practi-
9 tioner, or supplier that was not paid under
10 this title during the previous year or was
11 paid under this title only during a portion
12 of that year.

13 “(iii) TREATMENT OF PREVIOUS
14 OVERPAYMENTS.—If a provider of services,
15 physician, practitioner, or supplier has en-
16 tered into a repayment plan under sub-
17 paragraph (A) with respect to a specific
18 overpayment amount, such payment
19 amount shall not be taken into account
20 under clause (i) with respect to subsequent
21 overpayment amounts.

22 “(C) EXCEPTIONS.—Subparagraph (A)
23 shall not apply if the Secretary has reason to
24 suspect that the provider of services, physician,
25 practitioner, or supplier may file for bankruptcy

1 or otherwise cease to do business or if there is
2 an indication of fraud or abuse committed
3 against the program.

4 “(D) IMMEDIATE COLLECTION IF VIOLA-
5 TION OF REPAYMENT PLAN.—If a provider of
6 services, physician, practitioner, or supplier fails
7 to make a payment in accordance with a repay-
8 ment plan under this paragraph, the Secretary
9 may immediately seek to offset or otherwise re-
10 cover the total balance outstanding (including
11 applicable interest) under the repayment plan.

12 “(2) LIMITATION ON RECOUPMENT UNTIL RE-
13 CONSIDERATION EXERCISED.—

14 “(A) IN GENERAL.—In the case of a pro-
15 vider of services, physician, practitioner, or sup-
16 plier that is determined to have received an
17 overpayment under this title and that seeks a
18 reconsideration of such determination under
19 section 1869(b)(1), the Secretary may not take
20 any action (or authorize any other person, in-
21 cluding any medicare contractor, as defined in
22 paragraph (9)) to recoup the overpayment until
23 the date the decision on the reconsideration has
24 been rendered.

1 “(B) COLLECTION WITH INTEREST.—Inso-
2 far as the determination on such appeal is
3 against the provider of services, physician, prac-
4 titioner, or supplier, interest on the overpay-
5 ment shall accrue on and after the date of the
6 original notice of overpayment. Insofar as such
7 determination against the provider of services,
8 physician, practitioner, or supplier is later re-
9 versed, the Secretary shall provide for repay-
10 ment of the amount recouped plus interest at
11 the same rate as would apply under the pre-
12 vious sentence for the period in which the
13 amount was recouped.

14 “(3) STANDARDIZATION OF RANDOM PREPAY-
15 MENT REVIEW.—

16 “(A) IN GENERAL.—A medicare contractor
17 may conduct random prepayment review only to
18 develop a contractor-wide or program-wide
19 claims payment error rates.

20 “(B) CONSTRUCTION.—Nothing in sub-
21 paragraph (A) shall be construed as preventing
22 the denial of payments for claims actually re-
23 viewed under a random prepayment review.

24 “(4) LIMITATION ON USE OF EXTRAPO-
25 LATION.—A medicare contractor may not use ex-

1 trapolation to determine overpayment amounts to be
2 recovered by recoupment, offset, or otherwise
3 unless—

4 “(A) there is a sustained or high level of
5 payment error (as defined by the Secretary); or

6 “(B) documented educational intervention
7 has failed to correct the payment error (as de-
8 termined by the Secretary).

9 “(5) PROVISION OF SUPPORTING DOCUMENTA-
10 TION.—In the case of a provider of services, physi-
11 cian, practitioner, or supplier with respect to which
12 amounts were previously overpaid, a medicare con-
13 tractor may request the periodic production of
14 records or supporting documentation for a limited
15 sample of submitted claims to ensure that the pre-
16 vious practice is not continuing.

17 “(6) CONSENT SETTLEMENT REFORMS.—

18 “(A) IN GENERAL.—The Secretary may
19 use a consent settlement (as defined in sub-
20 paragraph (D)) to settle a projected overpay-
21 ment.

22 “(B) OPPORTUNITY TO SUBMIT ADDI-
23 TIONAL INFORMATION BEFORE CONSENT SET-
24 TLEMENT OFFER.—Before offering a provider

1 of services, physician, practitioner, or supplier a
2 consent settlement, the Secretary shall—

3 “(i) communicate to the provider of
4 services, physician, practitioner, or supplier
5 in a non-threatening manner that, based
6 on a review of the medical records re-
7 quested by the Secretary, a preliminary in-
8 dication appears that there would be an
9 overpayment; and

10 “(ii) provide for a 45-day period dur-
11 ing which the provider of services, physi-
12 cian, practitioner, or supplier may furnish
13 additional information concerning the med-
14 ical records for the claims that had been
15 reviewed.

16 “(C) CONSENT SETTLEMENT OFFER.—The
17 Secretary shall review any additional informa-
18 tion furnished by the provider of services, physi-
19 cian, practitioner, or supplier under subpara-
20 graph (B)(ii). Taking into consideration such
21 information, the Secretary shall determine if
22 there still appears to be an overpayment. If so,
23 the Secretary—

24 “(i) shall provide notice of such deter-
25 mination to the provider of services, physi-

1 cian, practitioner, or supplier, including an
2 explanation of the reason for such deter-
3 mination; and

4 “(ii) in order to resolve the overpay-
5 ment, may offer the provider of services,
6 physician, practitioner, or supplier—

7 “(I) the opportunity for a statis-
8 tically valid random sample; or

9 “(II) a consent settlement.

10 The opportunity provided under clause (ii)(I)
11 does not waive any appeal rights with respect to
12 the alleged overpayment involved.

13 “(D) CONSENT SETTLEMENT DEFINED.—

14 For purposes of this paragraph, the term ‘con-
15 sent settlement’ means an agreement between
16 the Secretary and a provider of services, physi-
17 cian, practitioner, or supplier whereby both par-
18 ties agree to settle a projected overpayment
19 based on less than a statistically valid sample of
20 claims and the provider of services, physician,
21 practitioner, or supplier agrees not to appeal
22 the claims involved.

23 “(7) LIMITATIONS ON NON-RANDOM PREPAY-
24 MENT REVIEW.—

1 “(A) LIMITATION ON INITIATION OF
2 NON-RANDOM PREPAYMENT REVIEW.—A
3 medicare contractor may not initiate non-
4 random prepayment review of a provider of
5 services, physician, practitioner, or supplier
6 based on the initial identification by that
7 provider of services, physician, practitioner,
8 or supplier of an improper billing practice
9 unless there is a sustained or high level of
10 payment error (as defined in paragraph
11 (4)(A)).

12 “(B) TERMINATION OF NON-RANDOM
13 PREPAYMENT REVIEW.—The Secretary
14 shall issue regulations relating to the ter-
15 mination, including termination dates, of
16 non-random prepayment review. Such reg-
17 ulations may vary such a termination date
18 based upon the differences in the cir-
19 cumstances triggering prepayment review.

20 “(8) PAYMENT AUDITS

21 “(A) WRITTEN NOTICE FOR POST-PAY-
22 MENT AUDITS.—Subject to subparagraph (C), if
23 a medicare contractor decides to conduct a
24 post-payment audit of a provider of services,
25 physician, practitioner, or supplier under this

1 title, the contractor shall provide the provider of
2 services, physician, practitioner, or supplier
3 with written notice of the intent to conduct
4 such an audit.

5 “(B) EXPLANATION OF FINDINGS FOR ALL
6 AUDITS.—Subject to subparagraph (C), if a
7 medicare contractor audits a provider of serv-
8 ices, physician, practitioner, or supplier under
9 this title, the contractor shall—

10 “(i) give the provider of services, phy-
11 sician, practitioner, or supplier a full re-
12 view and explanation of the findings of the
13 audit in a manner that is understandable
14 to the provider of services, physician, prac-
15 titioner, or supplier and permits the devel-
16 opment of an appropriate corrective action
17 plan;

18 “(ii) inform the provider of services,
19 physician, practitioner, or supplier of the
20 appeal rights under this title; and

21 “(iii) give the provider of services,
22 physician, practitioner, or supplier an op-
23 portunity to provide additional information
24 to the contractor.

1 “(C) EXCEPTION.—Subparagraphs (A)
2 and (B) shall not apply if the provision of no-
3 tice or findings would compromise pending law
4 enforcement activities or reveal findings of law
5 enforcement-related audits.

6 “(9) DEFINITIONS.—For purposes of this sub-
7 section:

8 “(A) MEDICARE CONTRACTOR.—The term
9 ‘medicare contractor’ has the meaning given
10 such term in section 1889(f).

11 “(B) RANDOM PREPAYMENT REVIEW.—
12 The term ‘random prepayment review’ means a
13 demand for the production of records or docu-
14 mentation absent cause with respect to a claim.

15 “(g) NOTICE OF OVER-UTILIZATION OF CODES.—
16 The Secretary shall establish a process under which the
17 Secretary provides for notice to classes of providers of
18 services, physicians, practitioners, and suppliers served by
19 the contractor in cases in which the contractor has identi-
20 fied that particular billing codes may be overutilized by
21 that class of providers of services, physicians, practi-
22 tioners, or suppliers under the programs under this title
23 (or provisions of title XI insofar as they relate to such
24 programs).”.

1 (b) PROVIDER ENROLLMENT PROCESS; RIGHT OF
2 APPEAL.—

3 (1) IN GENERAL.—Section 1866 (42 U.S.C.
4 1395cc) is amended—

5 (A) by adding at the end of the heading
6 the following: “; ENROLLMENT PROCESSES”;
7 and

8 (B) by adding at the end the following new
9 subsection:

10 “(j) ENROLLMENT PROCESS FOR PROVIDERS OF
11 SERVICES, PHYSICIANS, PRACTITIONERS, AND SUP-
12 PLIERS.—

13 “(1) IN GENERAL.—The Secretary shall estab-
14 lish by regulation a process for the enrollment of
15 providers of services, physicians, practitioners, and
16 suppliers under this title.

17 “(2) APPEAL PROCESS.—Such process shall
18 provide—

19 “(A) a method by which providers of serv-
20 ices, physicians, practitioners, and suppliers
21 whose application to enroll (or, if applicable, to
22 renew enrollment) are denied are provided a
23 mechanism to appeal such denial; and

24 “(B) prompt deadlines for actions on ap-
25 plications for enrollment (and, if applicable, re-

1 newal of enrollment) and for consideration of
2 appeals.”.

3 (2) EFFECTIVE DATE.—The Secretary of
4 Health and Human Services shall provide for the es-
5 tablishment of the enrollment and appeal process
6 under the amendment made by paragraph (1) within
7 6 months after the date of the enactment of this
8 Act.

9 (c) PROCESS FOR CORRECTION OF MINOR ERRORS
10 AND OMISSIONS ON CLAIMS WITHOUT PURSUING AP-
11 PEALS PROCESS.—The Secretary of Health and Human
12 Services shall develop, in consultation with appropriate
13 medicare contractors (as defined in section 1889(f) of the
14 Social Security Act, as inserted by section 5(f)(1)) and
15 representatives of providers of services, physicians, practi-
16 tioners, and suppliers, a process whereby, in the case of
17 minor errors or omissions that are detected in the submis-
18 sion of claims under the programs under title XVIII of
19 such Act, a provider of services, physician, practitioner,
20 or supplier is given an opportunity to correct such an error
21 or omission without the need to initiate an appeal. Such
22 process may include the ability to resubmit corrected
23 claims.

1 **SEC. 10. BENEFICIARY OUTREACH DEMONSTRATION PRO-**
2 **GRAM.**

3 (a) IN GENERAL.—The Secretary of Health and
4 Human Services shall establish a demonstration program
5 (in this section referred to as the “demonstration pro-
6 gram”) under which medicare specialists employed by the
7 Department of Health and Human Services provide advice
8 and assistance to medicare beneficiaries at the location of
9 existing local offices of the Social Security Administration.

10 (b) LOCATIONS.—

11 (1) IN GENERAL.—The demonstration program
12 shall be conducted in at least 6 offices or areas.
13 Subject to paragraph (2), in selecting such offices
14 and areas, the Secretary shall provide preference for
15 offices with a high volume of visits by medicare
16 beneficiaries.

17 (2) ASSISTANCE FOR RURAL BENEFICIARIES.—
18 The Secretary shall provide for the selection of at
19 least 2 rural areas to participate in the demonstra-
20 tion program. In conducting the demonstration pro-
21 gram in such rural areas, the Secretary shall provide
22 for medicare specialists to travel among local offices
23 in a rural area on a scheduled basis.

24 (c) DURATION.—The demonstration program shall be
25 conducted over a 3-year period.

26 (d) EVALUATION AND REPORT.—

1 (1) EVALUATION.—The Secretary shall provide
2 for an evaluation of the demonstration program.

3 Such evaluation shall include an analysis of—

4 (A) utilization of, and beneficiary satisfac-
5 tion with, the assistance provided under the
6 program; and

7 (B) the cost-effectiveness of providing ben-
8 eficiary assistance through out-stationing medi-
9 care specialists at local social security offices.

10 (2) REPORT.—The Secretary shall submit to
11 Congress a report on such evaluation and shall in-
12 clude in such report recommendations regarding the
13 feasibility of permanently out-stationing medical spe-
14 cialists at local social security offices.

15 **SEC. 11. POLICY DEVELOPMENT REGARDING EVALUATION**
16 **AND MANAGEMENT (E & M) DOCUMENTATION**
17 **GUIDELINES.**

18 (a) IN GENERAL.—The Secretary of Health and
19 Human Services may not implement any documentation
20 guidelines for evaluation and management physician serv-
21 ices under the title XVIII of the Social Security Act on
22 or after the date of the enactment of this Act unless the
23 Secretary—

24 (1) has developed the guidelines in collaboration
25 with practicing physicians and provided for an as-

1 sessment of the proposed guidelines by the physician
2 community;

3 (2) has established a plan that contains specific
4 goals, including a schedule, for improving the use of
5 such guidelines;

6 (3) has conducted appropriate and representa-
7 tive pilot projects under subsection (b) to test modi-
8 fications to the evaluation and management docu-
9 mentation guidelines; and

10 (4) finds that the objectives described in sub-
11 section (c) will be met in the implementation of such
12 guidelines.

13 The Secretary may make changes to the manner in which
14 existing evaluation and management documentation guide-
15 lines are implemented to reduce paperwork burdens on
16 physicians.

17 (b) PILOT PROJECTS TO TEST EVALUATION AND
18 MANAGEMENT DOCUMENTATION GUIDELINES.—

19 (1) LENGTH AND CONSULTATION.—Each pilot
20 project under this subsection shall—

21 (A) be of sufficient length to allow for pre-
22 paratory physician and medicare contractor
23 education, analysis, and use and assessment of
24 potential evaluation and management guide-
25 lines; and

1 (B) be conducted, in development and
2 throughout the planning and operational stages
3 of the project, in consultation with practicing
4 physicians.

5 (2) RANGE OF PILOT PROJECTS.—Of the pilot
6 projects conducted under this subsection—

7 (A) at least one shall focus on a peer re-
8 view method by physicians (not employed by a
9 medicare contractor) which evaluates medical
10 record information for claims submitted by phy-
11 sicians identified as statistical outliers relative
12 to definitions published in the Current Proce-
13 dures Terminology (CPT) code book of the
14 American Medical Association;

15 (B) at least one shall be conducted for
16 services furnished in a rural area and at least
17 one for services furnished outside such an area;
18 and

19 (C) at least one shall be conducted in a
20 setting where physicians bill under physicians
21 services in teaching settings and at one shall be
22 conducted in a setting other than a teaching
23 setting.

24 (3) BANNING OF TARGETING OF PILOT
25 PROJECT PARTICIPANTS.—Data collected under this

1 subsection shall not be used as the basis for overpay-
2 ment demands or post-payment audits.

3 (4) STUDY OF IMPACT.—Each pilot project
4 shall examine the effect of the modified evaluation
5 and management documentation guidelines on—

6 (A) different types of physician practices,
7 including those with fewer than 10 full-time-
8 equivalent employees (including physicians);
9 and

10 (B) the costs of physician compliance, in-
11 cluding education, implementation, auditing,
12 and monitoring.

13 (c) OBJECTIVES FOR EVALUATION AND MANAGE-
14 MENT GUIDELINES.—The objectives for modified evalua-
15 tion and management documentation guidelines developed
16 by the Secretary shall be to—

17 (1) enhance clinically relevant documentation
18 needed to code accurately and assess coding levels
19 accurately;

20 (2) decrease the level of non-clinically pertinent
21 and burdensome documentation time and content in
22 the physician's medical record;

23 (3) increase accuracy by reviewers; and

24 (4) educate both physicians and reviewers.

1 (d) STUDY OF SIMPLER, ALTERNATIVE SYSTEMS OF
2 DOCUMENTATION FOR PHYSICIAN CLAIMS.—

3 (1) STUDY.—The Secretary of Health and
4 Human Services shall carry out a study of the mat-
5 ters described in paragraph (2).

6 (2) MATTERS DESCRIBED.—The matters re-
7 ferred to in paragraph (1) are—

8 (A) the development of a simpler, alter-
9 native system of requirements for documenta-
10 tion accompanying claims for evaluation and
11 management physician services for which pay-
12 ment is made under title XVIII of the Social
13 Security Act; and

14 (B) consideration of systems other than
15 current coding and documentation requirements
16 for payment for such physician services.

17 (3) CONSULTATION WITH PRACTICING PHYSI-
18 CIANS.—In designing and carrying out the study
19 under paragraph (1), the Secretary shall consult
20 with practicing physicians, including physicians who
21 are part of group practices.

22 (4) APPLICATION OF HIPAA UNIFORM CODING
23 REQUIREMENTS.—In developing an alternative sys-
24 tem under paragraph (2), the Secretary shall con-

1 sider requirements of administrative simplification
2 under part C of title XI of the Social Security Act.

3 (5) REPORT TO CONGRESS.—The Secretary
4 shall submit to Congress a report on the results of
5 the study conducted under paragraph (1).

6 (e) DEFINITIONS.—In this section—

7 (1) the term “rural area” has the meaning
8 given that term in section 1886(d)(2)(D) of the So-
9 cial Security Act, 42 U.S.C. 1395ww(d)(2)(D); and
10 (2) the term “teaching settings” are those set-
11 tings described in section 415.150 of title 42, Code
12 of Federal Regulations.

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